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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 MARIA MORALES,

12 Plaintiff,

13 v.

14 STEVEN A. BOOSKA,

15 Defendant.

Case No. C07-00254-CRB

**JOINT CASE MANAGEMENT
STATEMENT AND PROPOSED
ORDER**

16 The parties to the above-entitled action jointly submit this Case Management Statement and
17 Proposed Order and request the Court to adopt it as its Case Management Order in this case.

18 **DESCRIPTION OF THE CASE**

19 1. A brief description of the events underlying the action:

20 Plaintiff filed the herein Complaint to address alleged violations of the Fair Debt Collection
21 Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter “FDCPA”). The alleged violations stem from
22 a collection lawsuit wherein Defendant attempted to collect a consumer debt from Plaintiff. The
23 Complaint from the collection lawsuit has been attached to the Complaint in this matter as an
24 exhibit.

25 Generally, Plaintiff incurred a consumer debt which was allegedly consigned, placed or
26 otherwise transferred to LHR, Inc., for collection from the Plaintiff. Defendant filed a lawsuit
27 against Plaintiff in an attempt to collect said consumer debt. Plaintiff contends that the Defendant’s
28 collection efforts in the state court violated various provisions of the Fair Debt Collection Practices

1 Act, 15 U.S.C. § 1692-1692o.

2 Defendant's Position:

3 Ms. Morales and her attorney Mr. Schwinn raised these same allegations in a cross-complaint
4 to the underlying collection lawsuit. In the underlying collection lawsuit and the associated
5 cross-complaint, the parties negotiated a settlement and dismissed their respective complaints with
6 prejudice. The parties to that settlement agreement were Mr. Booska's client, Ms. Morales's
7 creditor and Ms. Morales. The settlement agreement contained the following release language:

8 Plaintiff [Morales's creditor and Mr. Booska's client] and Defendant [Morales], on
9 behalf of themselves as well as her and their heirs, successors and assigns, hereby
10 agree to fully release and forever discharge and covenant not to sue the other and not
11 hold them liable from any and all claims, demands or causes of action which either
12 party has against the other arising out of the Account or Lawsuit, including, but not
limited to, any claims arising out of, based upon, or relating in any way to any
alleged act, omission, or dispute asserted in the claim or that could have been
asserted in the claim and/or any other claim made under federal or state statutory or
common law.

13 This release would include all persons in privity with Morales's creditor/Booska's client.
14 Mr. Booska is such a party.

15 Moreover, these claims are barred by the doctrine of claim preclusion. The doctrine of claim
16 preclusion bars identical causes of action involved in duplicative suits, "so that a judgment in the
17 first action would be res judicata on the claim in the present lawsuit." Bush v. Superior Court
18 (Rains) (1992) 10 Cal.App.4th 1374, 1384. To show claim preclusion, the facts alleged in both
19 complaints are compared. "To be the same 'cause of action,' each complaint must allege invasion
20 of the same 'primary right.'" Id. at 387 (emphasis in original).

21 Often called the doctrine of duplicative litigation, the doctrine bars "all grounds for recovery
22 which could have been asserted, whether they were or not, in a prior suit between the same parties
23 ... on the same cause of action, if the prior suit concluded in a final judgment on the merits."
24 International Union of Operating Eng'rs-Employers Constr. Indus. Pension, Welfare & Training
25 Trust Funds v. Karr (9th Cir. 1993) 994 F.2d 1426, 1429 (alteration in original) (quoting Ross v.
26 International Bhd. of Elec. Workers (9th Cir. 1980) 634 F.2d 453, 457); see also Mpoyo v. Litton
27 Electro-Optical Sys. 430 F.3d 985, 987 (9th Cir. 2005); Goins v. JBC & Associates (D. Conn 2005)
28 352 F.Supp.2d 262, 266.

Here, the very claims Ms. Morales asserts against Mr. Booska were also asserted in her cross-complaint in the underlying collection lawsuit. Both the instant lawsuit and her cross-complaint were premised on the alleged wrongful filing of the underlying collection lawsuit. The rights and obligations outlined in the settlement agreement would be destroyed and made illusory if this second suit is allowed to proceed forward. As outlined above, all assigns of either party were specifically included in the mutual release of the parties. We believe that release specifically includes Mr. Booska in the settlement agreement.

Nor does the fact that the case was dismissed with prejudice after settlement defeat a claims preclusion defense. The fact that the cross-complaint did not have a final adjudication on the merits does not create a hurdle to dismissal of the case based on claim preclusion. In the case of In re Vernon, the Court held that the dismissal with prejudice of the first case, pursuant to settlement of the parties, constituted final judgment for purposes of applying claim preclusion. In re Vernon (E.D. Cal. 2006) 2006 WL 2843626, *5. “[I]t is well established that a dismissal with prejudice constitutes final judgment... .” Id. at 6.

Based on the foregoing arguments, Mr. Booska believes that Ms. Morales’s complaint, which seeks to recover a second time in addition to the settlement, is frivolous.

2. The principal factual issues which the parties dispute:

The parties agree that Defendant is a debt collector. The Defendant agrees that he filed and signed the collection Complaint attached to the Complaint in this matter as Exhibit “1.”

The parties disagree about the remaining factual issues in this case.

3. The principal legal issue which the parties dispute:

- a. Whether Plaintiff is a “consumer” within the meaning of 15 U.S.C. § 1692a(3);
- b. Whether the financial obligation owed to Beneficial California, Inc., by the Plaintiff is a “debt” within the meaning of 15 U.S.C. 1692a(5);
- c. Whether Defendant misrepresented the character, amount or legal status of the debt, in violation of 15 U.S.C. § 1692e(2)(A);
- d. Whether Defendant filed a lawsuit in an attempt to collect a debt that was

1 barred by the applicable statute of limitations, in violation of 15 U.S.C. §§
2 1692e, 1692e(10) and 1692f;

3 e. Whether plaintiff's claims have been released in the settlement of the
4 underlying collection lawsuit and plaintiff's cross-complaint;

5 f. Whether plaintiff's claims are barred based on claims preclusion in that she
6 had an opportunity to litigate this very claim in the underlying
7 cross-complaint, and chose rather to settle for a dismissal with prejudice; and

8 g. Whether plaintiff can recover twice for the same injury, once in settlement
9 of the underlying cross-complaint, and the second begin the instant lawsuit.

10 4. The other factual issues [*e.g. services of process, personal jurisdiction, subject matter*
11 *jurisdiction venue*] which remain unresolved for the reason stated below the parties propose to
12 resolve those issues:

13 The parties believe the factual issues above, and any others that may be revealed in
14 discovery, may be resolved through the discovery process.

15 5. The parties which have not been served and the reasons:

16 None known at this time.

17 6. The additional parties which the below-specified parties intend to join and the
18 intended time frame for such joinder:

19 None known at this time.

20 7. The following parties consent to assignment of this case to a United States Magistrate
21 Judge for [*court or jury*] trial:

22 None at this time.

23 **ALTERNATIVE DISPUTED RESOLUTION**

24 8. [*please indicate the appropriate response(s).*]

25 ☐ The case was automatically assigned to Nonbinding Arbitration at filing and will be ready
26 for the hearing by (*date*) _____.

27 ☐ The parties have filed a Stipulation and Proposed Order Selecting an ADR process (*specify*
28 *process*): _____.

1 ☒ The parties filed a Notice of Need for ADR Phone Conference and the phone conference was
2 held on or is scheduled for To be Scheduled.

3 ☐ The parties have not filed a Stipulation and Proposed Order Selecting an ADR process and
4 the parties jointly request _____.

5 9. Please indicate any other information regarding ADR process or deadline.

6 None.

DISCLOSURES

7 10. The parties certify that they have made the following disclosures *[list disclosures of*
8 *persons, documents, damage computation and insurance agreements]*:

9 Plaintiff served her Initial Disclosures on April 2, 2007. The Defendant shall serve his Initial
10 Disclosures required by Fed. R. Civ. P. 26(a)(1) by April 20, 2007.

DISCOVERY

11 11. The parties agree to the following discovery plan *[Describe the plan e.g., any*
12 *limitation on the number, duration or subject matter for various kinds of discovery; discovery from*
13 *experts; deadlines for completing discovery]*:

14 a. The Defendant shall serve by April 20, 2007, the information required by
15 Fed. R. Civ. P. 26(a)(1).

16 h. All discovery shall commenced or served in time to be completed by
17 December 31, 2007.

18 i. Disclosures required by Fed. R. Civ. P. 26(a)(2), including reports from
19 retained experts, are due from Plaintiff by September 15, 2007, and from
20 Defendants by September 30, 2007.

21 j. Supplementations under Fed. R. Civ. P. 26(e) due as necessary and as
22 permitted by the Federal Rules of Civil Procedure.

23 k. All potentially dispositive motions shall be filed by January 31, 2008.

24 l. The Parties shall file final witness and exhibit disclosures under Fed. R. Civ.
25 P. 26(a)(3) by January 15, 2008.

26 m. The parties shall have 15 days after service of final lists of witnesses and
27 exhibits to file their objections under Fed. R. Civ. P. 26(a)(3).
28

TRIAL SCHEDULE

12. The parties request a trial date as follows:

Eight weeks after the dispositive motions or by March 31, 2008 if no motions are filed.

13. The parties expect that the trial will last for the following number of days: 3 days.

Dated: April 13, 2007

/s/ Fred W. Schwinn

Fred W. Schwinn, Esq.
Attorney for Plaintiff
MARIA MORALES

Dated: April 13, 2007

/s/ June D. Coleman

June D. Coleman, Esq.
Attorney for Defendant
STEVEN A. BOOSKA

CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order. In addition the Court orders:

[The Court may wish to make additional orders, such as:

- a. Referral of the parties to court or private ADR process;*
- b. Schedule a further Case Management Conference;*
- c. Schedule the time and content of supplemental disclosures;*
- d. Specially set motions;*
- e. Impose limitations on disclosure of discovery;*
- f. Set time for disclosure of identity, background and opinions of experts;*
- g. Set deadlines for completing fact and expert discovery;*
- h. Set time for parties to meet and confer regarding pretrial submissions;*
- I. Set deadline for hearing motion directed to the merits of the case;*
- j. Set deadline for submission of pretrial material;*
- k. Set date and time for pretrial conference;*
- l. Set a date and time for trial.]*

Dated: _____

UNITED STATES
DISTRICT/MAGISTRATE JUDGE